



About the Author

Vakayi Douglas Chikwekwe is employed by the Judicial Service Commission of Zimbabwe as Provincial Magistrate of the Metropolitan Province of Harare. He is a holder of an LLB Hons Degree from the Midlands State University, LLM Westminster (London), Cert Ed (UZ), Dip. Sp Ed (UZ) and Mag Adm Cert (JCZ). He is also a registered Legal Practitioner with the High Court of Zimbabwe, a Conveyancer and Notary Public. He was once the President of the Student Representative Council at the Judicial College of

Zimbabwe and Student Ambassador at the University of Westminster (London) where he was awarded a Commonwealth Scholarship. He has contributed a number of legal articles in some Law Journals. Vakayi Douglas Chikwekwe has worked tirelessly for the better welfare of Magistrates in Zimbabwe. He has been a Committee Member, Organising Secretary, Secretary General and President of the Magistrates' Association of Zimbabwe. He has also been the Chairman of the Liquor Licence Board of Zimbabwe. He is a member of the Law Society of Zimbabwe and the Institute of Directors, Zimbabwe.

AN INTRODUCTION TO THE LEGAL SYSTEM OF ZIMBABWE - Vakayi Douglas Chikwekwe

AN INTRODUCTION TO THE LEGAL SYSTEM OF ZIMBABWE

Vakayi Douglas Chikwekwe



AN INTRODUCTION TO THE LEGAL SYSTEM OF ZIMBABWE





AN INTRODUCTION TO THE LEGAL SYSTEM OF ZIMBABWE



Vakayi Douglas Chikwekwe

Cert Ed (UZ), Dip Sp Ed (UZ), MagAd Cert (JC), LLB Hons (MSU),
LLM (Westminster London)

AN INTRODUCTION TO THE LEGAL SYSTEM OF ZIMBABWE

© Vakayi Douglas Chikwekwe, 2016

First Edition 2016

Typeset by Mambo Press
Cover by Mambo Press, Gweru

All rights reserved.
No part of the publication may be
reproduced, stored in a retrieval
system or transmitted in any
form by any means – electronic,
mechanical, photocopying, recording,
or otherwise, without the express
written permission of the copyright
holders.

ISBN: 978-0-7974-6825-2

Printed and bound by Mambo Press, Senga Road, Gweru

INTRODUCTION TO THE LEGAL SYSTEM OF ZIMBABWE

CONTENTS	PAGES
CHAPTER 1: Introduction to Law	1-15
CHAPTER 2: Principles of Law	16-22
CHAPTER 3: Sources of Law	23-33
CHAPTER 4: Choice of Law	34-46
CHAPTER 5: Divisions of Law	47-56
CHAPTER 6: Parliament Role, Structure and Law Making Process .	57-72
CHAPTER 7: The Courts – Role and Structure	73-93
CHAPTER 8: Fundamentals of Criminal Procedure and Its Nature..	94-114
CHAPTER 9: Fundamentals of Civil Procedure and Its Nature	115-142
CHAPTER 10: Fundamental of Statutory Law	143-165
GLOSSARY OF LATIN TERMS	166-175
INDEX OF LAW REPORTS	176-178

CONTENTS

Half title	i
Title page	ii
Original title page to the first edition	iii
Preface to the first edition	xv

CHAPTER 1

INTRODUCTION TO LAW

1.1 A Legal system	1
1.2 The meaning of law	1
1.3 The purpose of law	5
1.4 Justice	9
1.5 The reasonable man	13
1.6 The application of law	14

CHAPTER 2

PRINCIPLES OF LAW

2.0 Introduction	16
2.1 Just application	17
2.2 Equality	17
2.3 Uniformity	20

2.4 Authority	20
2.5 Certainty	20
2.6 The doctrine of separation of powers	20

CHAPTER 3

SOURCES OF LAW

3.0 Custom and customary law	23
3.1 Custom	23
3.2 Customary law	25
3.3 General law	27
3.3.1 Common law	27
3.3.2 Precedent	29
3.3.3 Authoritative texts	32
3.34 Law reports	32

CHAPTER 4

CHOICE OF LAW RULE

Choice of Law Rule	34
--------------------------	----

CHAPTER 5

DIVISION OF LAW

5.0 Branches of law	47
5.1 Public law	47

5.1.1 Constitutional law	47
5.1.2 Administrative law	48
5.1.3 Criminal law	49
5.2 Private law	50
5.2.1 The law of persons	50
5.2.2 The law of property	51
5.2.3 The law of succession	52
5.2.4 The law of obligation	52
5.2.5 The law of contract	53
5.2.6 The law of declict	53
5.3 International law	54
5.3.1 Public International law	54

CHAPTER 6

PARLIAMENT

6.0 Role structure and the law making process	56
6.1 The role and function of Parliament	56
6.1.2 The legislative role	59
6.1.3 The oversight role	59
6.1.4 The representative role	61
6.1.5 The judicial role	61
6.1.6 Other different roles	61

6.2 Structure of parliament	62
6.2.1 The structure of the Senate	62
6.2.2 The structure of the National Assembly	63
6.3 The law making process	64
6.3.1 Types of bills	64
6.3.2 Public bills	65
6.3.3 Private bills	65
6.3.4 Hybrid bills	65
6.4 Stages of a bill	66
6.4.1 Publication in the Government Gazette	66
6.4.2 Referral to the Parliamentary Legal Committee	67
6.4.3 First Reading	67
6.4.4 Referral to the Parliamentary Legal Committee	67
6.4.5 Second Reading	68
6.4.6 Committee Stage	69
6.4.7 Report Stage	69
6.4.8 Third Reading	70
6.4.9 Transmission of Bills to the next House / Chamber	70
6.4.10 Authentication by the Clerk of Parliament	70
6.4.11 Presidential Assent	71
6.4.12 Disagreement between the Senate and the National Assembly	72

CHAPTER 7

THE COURTS

ROLES AND STRUCTURE

7.0 The roles of the courts	73
7.1 Structure of the courts	77
7.1.1 The Constitutional Court	79
7.1.2 The Supreme Court	81
7.1.3 The High Court	83
7.1.4 The Labour Court	87
7.1.5 The Magistrates' Court	87
7.1.6 The Administrative Court	92
7.1.7 Other Courts	92

CHAPTER 8

FUNDAMENTALS OF CRIMINAL

8.1 Criminal procedure and its nature	94
8.1.1 Arrests	95
8.1.2 Police officers	96
8.1.3 Arrests by police officer without warrant	97
8.1.4 The requirements to make an arrest lawful	97
8.1.5 A reasonable suspicion	98
8.1.6 Arrest with warrant	99
8.1.7 Procedure after arrest without warrant	99

8.2 Remand application	100
8.3 Bail	100
8.3.1 Application for bail	101
8.3.2 Granting of bail	101
8.4 Criminal trials	102
8.4.1 Accusatorial system	102
8.4.2 Inquisitorial system	103
8.4.3 The parties	103
8.4.4 The Public Prosecutor	104
8.4.5 The Presiding officer	104
8.4.6 The Defence lawyer	104
8.4.7 The Interpreter	105
8.4.8 Relevant documentation	106
8.4.9 The docket	106
8.4.10 Charge sheet.....	106
8.4.11 State outline	107
8.4.12 Defence outline	107
8.4.13 Court record	107
8.5 The uncontested Trial	108
8.5.1 The Plea of guilty procedure	108
8.5.2 Criteria used to decide which procedure to adopt	108
8.5.3 The procedure under S.271 (2) (a)	108
8.5.4 The procedure under S.271 (2) (b).....	109

8.5.6 The duty of the court	110
8.6 The Contested Trial	111
8.6.1 Presentation of the state case	111
8.6.2 Presentation of the defence case	112
8.6.3 Judgement or verdict	113
8.6.4 Sentence	113

CHAPTER 9

FUNDAMENTALS OF CIVIL PROCEDURE AND ITS NATURE

9.1 The distinction between civil and criminal procedures	117
9.2 The distinction between trial and application procedures	117
9.3 Jurisdiction	118
9.4 Civil action	121
9.4.1 Structure and stages of a civil action	121
9.4.2 Letter of demand	121
9.4.3 Summons commencing action	122
9.4.4 Particulars of claim	122
9.4.5 Service of court process	124
9.4.6 Judgment by consent	126
9.4.7 Default Judgment	126
9.4.8 Appearance to defend	127
9.5 Exceptions to summons and pleas	127
9.6 Motion to strike out	129

9.7 Plea	130
9.8 Counterclaims (claims in reconvention)	131
9.9 Summary Judgment	132
9.10 Further particulars	133
9.11 Replication	134
9.12 Closure of pleadings	134
9.13 Discovery	135
9.14 Pre-trial conference	135
9.15 Setdown of trial	136
9.16 Non-appearance of parties	137
9.17 Conduct of trial	137
9.18 Final Judgement	138
9.19 Enforcement of Judgment	139
9.20 Application procedure	141
9.21 <i>Ex–parte</i> application	142

CHAPTER 10

THE INTERPRETATION OF STATUTES

10.1 The meaning of statutes	143
10.2 The role of the courts	144
10.3 The general structure of an Act / statute	145
10.3.1 Non-Statutory matter	145
10.3.2 Introductory apparatus	145

10.3.3 Preliminary provisions	146
10.3.4 Substantive provisions	146
10.3.5 General or miscellaneous provisions	147
10.3.6 Final provisions	149
10.4 Internal aids to statutory interpretations	149
10.4 (a) Preamble	150
10.4 (b) The long title	150
10.4 (c) The interpretation clause	151
10.4 (d) Other internal aids	151
10.5 Rules of statutory interpretation	151
10.5.1 The literal rule	152
10.5.2 The golden rule	152
10.5.3 The mischief rule	154
10.6 Maxims of statutory interpretation	155
10.6.1 The <i>eiusdem</i> or <i>ejusdem generis</i> rule	155
10.6.2 <i>cessanratione</i> rule	157
10.6.3 <i>expressiounius</i> exclusion <i>alterius</i> rule	157
10.6.4 “ <i>nonscitur a sociis</i> ” rule	158
10.6.5 <i>contemporaneaexpositioestfortissima in lege</i>	160
10.7 The presumption of statutory interpretation	160
10.7.1 The presumption against the alteration of the common. law more than necessary	160
10.7.2 The presumption against retrospectivity	161

10.7.3 The presumption of constitutionality	164
10.7.4 The presumption against interpreting a statute so as to oust or restrict the jurisdiction of the superior courts	165

PREFACE

The legal system of Zimbabwe encompasses what may be described as the type of legal processes that apply to this country or jurisdiction. It includes the sources of law, the law making process and their application.

The legal system of Zimbabwe has undergone some transformation since the attainment of independence in 1980. Of great interest is the label placed on the legal system. Roman Dutch Law has been applied in this country from a historical background. When the whites occupied Zimbabwe in 1890 they introduced the system which was applied from their base at the Cape of Goodhope, South Africa. This adoption was contained in the previous Constitutions before attaining independence. The Lancaster House drawn Constitution which was repealed in 2013 also adopted that provision in Section 89 as follows;

“Subject to the provisions of any law for the time being in force in Zimbabwe relating to the application of African Customary Law, the law to be administered by the Supreme Court, the High Court and by any courts in Zimbabwe subordinate to the High Court shall be the law in force in the colony of the Cape of Good Hope on 10th June 1891 as modified by subsequent legislation having in Zimbabwe the force of law.”

From this background we notice that although the white colonisers introduced their imported law, they made provision for African Customary Law. The current Constitution which came into effect in 2013 provides for the law to be administered in Zimbabwe in Section 192. It provides that the law to be administered by the courts of Zimbabwe is the law that was in force on the effective date, as subsequently modified. This implies that the dual legal system enshrined in all prior constitutions still prevail in this country

Once again the dual legal system which still haunts us and sometimes creates conflict of laws is a clear result of the historical developments in this country. When the white settlers defeated Lobengula's feudal state and the Shonas in the first Chimurenga wars, they did not have enough resources to eradicate and completely overhaul the African legal system. In order to preserve

tranquillity and peace they let the Africans handle their private disputes using their customs. It can therefore be said the private law of Africans was to be governed by customary law. On the other hand, to maintain law and order in the state the whites used their criminal and constitutional law (public law) to control the Africans. They did this in order to control the defeated Africans and the state machinery was used to enforce the law.

The whites were governed by general law (that is, all other law which is not customary law) and for the system to function properly, separate courts were established. Customary law was applied in the Chief's Courts and the District Commissioners' Courts. General Law was applied in the Magistrates' Courts and the High Court. After independence, the Chiefs Courts were replaced by Primary Courts introduced by the Customary Law and Primary Courts Act Number 6 of 1981. This has since been replaced by the Customary Law and Local Courts Act [Chapter 7:05] which came into force on 12 February, 1992.

The current position is that the Local Courts, which are presided over by Headmen and Chiefs, apply Customary Law. The Magistrates Courts apply both customary and general law and they operate with separate sections. Section 11 (I) of the Magistrates' Court Act [Chapter 7:10] provided in part;

“Every court (Magistrates') shall have in all civil cases, whether determined by general law of Zimbabwe or by customary law the following jurisdiction....”

The High Court which has unlimited jurisdiction in civil cases can determine cases using both general and customary law. The Supreme Court which is an appeal court necessarily deals with appeals relating to both systems of law. Section 3 of the Customary Law and Local Courts Act which became operational on 1st November 1997 provides for the choice of law to be applied in disputes. It provides that parties to a dispute can elect whether they want their case to be decided according to customary law or general law. Debate is still, however, ongoing on the conflicts between customary law and general law.

This text is only a guide dealing with introductory concepts of the Legal System of Zimbabwe. It is not exhaustive or an end to itself. It is however a starting point to those who want to understand and appreciate the basic

Zimbabwean legal system. It is envisaged that it will assist law students, the police, legal practitioners, prosecutors, magistrates and the general public and members of other professions who seek insight knowledge on our legal system.

Vakayi Douglas Chikwekwe